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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,666

08/01/2006

Brian John Higgins

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3792

28289 7590 06/18/2009

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EXAMINER

SMITH, NKEISHA

ART UNIT

PAPER NUMBER

3632

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,666	<b>Applicant(s)</b> HIGGINS, BRIAN JOHN	
	<b>Examiner</b> NKEISHA J. SMITH	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-9 and 11-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 and 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/17/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following correspondence is a non-final Office Action for application no. 10/533,666 for a GUTTER AND MOUNTING DEVICE FOR BUILDINGS, filed on 10/17/2005. This correspondence is in response to applicant's request for continued examination filed on 6/3/2009. Claims 7-9 and 11-29 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/2009 has been entered.

#### ***Priority***

3. Applicant is advised of possible benefits under 35 U.S.C. 119(a)-(d), wherein an application for patent filed in the United States may be entitled to the benefit of the filing date of a prior application filed in a foreign country.

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 7-9, 11-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Lasscock (3,864,882).

Regarding claim 7, Lasscock teaches a mounting device (Figs. 1, 2), the mounting device including an elongated device body (20) that extends in a second longitudinal direction between opposite ends, the body including an attachment section (29) and a gutter mounting section (21), the gutter mounting section including a plurality of gutter retaining clips (22) spaced apart from one another in the second longitudinal direction.

Regarding claim 8, Lasscock teaches the device of claim 7, wherein said elongated device body includes a generally U-shaped portion, one leg thereof being the attachment section and the other leg thereof being the gutter mounting section, the legs of the U- shaped portion being spaced apart.

Regarding claim 9, Lasscock teaches the device of claim 8, wherein the gutter retaining clips include projections which extend into the recess.

Regarding claim 11, teaches the device of claim 9, wherein said projections are hook-like elements. The examiner notes that this claim involves improper method limitations, because the claim is directed to an apparatus, which are not given any patentable weight.

Regarding claim 12, Lasscock teaches the device of claim 8, further including a plurality of access apertures (holes located in gutter mounting section through which elements 22 are connected) in the gutter mounting section.

Regarding claim 13, Lasscock teaches the device of claim 7, wherein the retaining clips are aligned at an angle with respect to a single edge of the mounting device.

Although claim 14 recites purely functional limitations, Lasscock teaches the device of claim 7, wherein the attachment section is capable of receiving fasteners.

Regarding claim 15, Lasscock teaches the device of claim 8, wherein the body is channel shaped and is generally U-shaped in cross-section transverse to the longitudinal direction.

Regarding claim 16, Lasscock teaches a gutter and mounting device (Figs. 1, 2), the gutter (35) comprising a generally channel or trough shaped body with an inner wall having a gutter mounting thereon, and the gutter extending in a first longitudinal direction, the mounting device including an elongated device body (20) that extends in a second longitudinal direction between opposite ends, the body including an attachment section (29) which is attachable to the building and a gutter mounting section (21), the gutter mounting section including a plurality of gutter retaining clips (22) spaced apart from one another in the longitudinal direction.

Regarding claim 17, Lasscock teaches the device of claim 16, wherein said elongated body includes a generally U-shaped portion, one leg thereof being the attachment section and the other leg thereof being the gutter mounting section, the legs of the U-shaped portion being spaced apart.

Regarding claim 18, Lasscock teaches the device of claim 17, wherein the gutter retaining clips include projections which extend into the recess and are adapted to cooperate with the gutter mounting on the inner wall of the gutter.

Regarding claim 19, Lasscock teaches the device of claim 18, wherein the gutter mounting on the inner wall of the gutter is a raised elongated rib which, when the gutter is in the installed position, is disposed within the recess and inhibited from removal by said projections (Fig. 2).

Regarding claim 20, Lasscock teaches the device of claim 18, wherein said projections are hook-like elements pressed or punched out of the gutter mounting section. The examiner notes that this claim involves improper method limitations, because the claim is directed to an apparatus, which are not given any patentable weight.

Regarding claim 21, Lasscock teaches the device of claim 18, further including a plurality of access apertures in the gutter mounting section.

Regarding claim 22, as best understood, Lasscock teaches the device of claim 16, wherein the retaining clips are aligned at an angle with respect to a single edge of the mounting device corresponding to an angle of a fall required when the gutter is in the installed position.

Although claim 23 recites purely functional limitations, Lasscock teaches the device of claim 16, wherein the attachment section is capable of receiving fasteners.

Regarding claim 24, Lasscock teaches the device of claim 16, wherein the body is channel shaped and is generally U-shaped in cross-section transverse to the longitudinal direction.

Regarding claim 25, Lasscock teaches a method of installing a gutter that extends in a first longitudinal direction, comprising the steps of: attaching a mounting device to a building, the mounting device comprising an elongated device body that extends in a second longitudinal direction between opposite ends and including a plurality of retaining clips, the mounting device being positioned on the building so that the clips are aligned so as to correspond to an angle of a fall required when the gutter is in an installed position; and mounting the gutter to the device by moving the gutter to the installed position where the retaining clips cooperate with the gutter to retain the gutter in the installed position, when in the installed position, the first longitudinal direction of the gutter is substantially parallel to the second longitudinal direction of the elongated device body.

Regarding claim 26, as best understood, Lasscock teaches the method of claim 25, wherein the retaining clips of the mounting device are aligned at an angle with respect to a single edge of the mounting device corresponding to the angle of the fall, and the step of attaching the mounting device to the building further comprises aligning the single edge of the mounting device to an edge of the building.

Regarding claims 27 and 28, Lasscock teaches the device of claims 7 and 16, wherein at least two retaining clips of the mounting device are aligned.

Regarding claim 29, Lasscock teaches the method of claim 25, wherein at least two retaining clips of the mounting device are aligned, engage the gutter, and the step of attaching the mounting device to the building further comprises mounting the gutter to the mounting device such that at least two retaining clips simultaneously engage the gutter.

### ***Response to Arguments***

7. Applicant's arguments filed 6/3/2009 have been fully considered but they are either moot or not persuasive.

8. The examiner has withdrawn the rejection under 35 U.S.C. § 112, second paragraph.

9. The applicant states that the prior art Lasscock reference does not teach all of the claims limitations of independent claims 7, 16 and 25. Specifically, the applicant argues that the gutter retaining clips (22) of Lasscock are spaced apart vertically and are not spaced apart in the second longitudinal direction. The examiner respectfully disagrees. The gutter retaining clips are arranged in two columns, or vertical rows, of three clips. Each of the three clips of the columns are spaced apart from each other vertically in addition to the two columns being spaced apart from each other in a second longitudinal direction. Thus, the retaining clips of one column are longitudinally spaced apart from the retaining clips of other column.

10. With respect to claims 13, 22 and 25, the applicant argues that the Lasscock reference does not teach that the retaining clips are aligned so as to correspond to an angle of fall when the gutter is in an installed position. The Examiner respectfully



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disagrees. When the mounting device of Lasscock is placed on the gutter and the retaining clips are engaged with the gutter, the clips are positioned at the same angle as that of the gutter. Thus when the gutter slopes downward, or in any other position, the clips that are situated on the gutter similarly slope downward, or in any other position, by virtue of their placement on the gutter.

11. Finally, with respect to claims 27 and 28, applicant argues that the Lasscock reference does not teach that at least two retaining clips of the mounting device are aligned, such that the clips are able to simultaneously engage the gutter to retain the gutter to the mounting device. The Examiner respectfully disagrees. As shown in the Lasscock reference, the retaining clips are grouped into two columns of three clips each. The clips are aligned vertically on the columns and are also spaced apart from each other horizontally. The retaining clips are also able to perform the functional limitation of simultaneously engaging the gutter to retain the gutter to the mounting device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NKEISHA J. SMITH whose telephone number is (571) 272-5781. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be reached on (571) 272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NKEISHA J. SMITH/  
Examiner, Art Unit 3632

June 10, 2009

/J. ALLEN SHRIVER II/  
Supervisory Patent Examiner, Art Unit 3632